IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

CRL.A.No. 121 of 2007()

SC.1248/2001 of ADDL.SESSIONS COURT-TRIAL OF ABKARI ACT CASES,NEYYATTINKARA

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APPELLANTS/RESPONDENTS:

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1. SAROJINI, AGED 55, D/O.KAMALAMMA,
   KOZHITHALACHAL, MELEPUTHEN VEEDU,
   THETTIVILA, KALLIYOOR DSOM, KALLIYOOR VILLAGE.

2. LALITHA, D/O.KAMALAMMA,
   PUTHIRIVILA PUTHEN VEEDU,
   THALAYAL DESOM, ATHIYANNOOR VILLAGE.

BY ADVS. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENT: PETITIONER

THE STATE OF KERALA,
REPRESENTED BY THE DIRECTOR GENERAL OF
PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.827 OF 2007 IN CRL. APPEAL NO.121 OF 2007.

DISMISSED

25.7.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO.121 OF 2007

Dated this the 25th day of July, 2007

JUDGMENT

This appeal is filed against the order in M.C. No.5 of 2006 in S.C. No. 1248 of 2001 on the file of the Additional Sessions Court (trial of Abkari Act Cases), Neyyattinkara.

2. The appellants stood sureties for the accused in the above Sessions Case. Since the accused did not appear before the court below as per the bond executed by the appellants, M.C. proceedings were initiated against the appellants and they were directed to pay penalty of Rs.10,000/- each and in default of payment of the amount, to undergo simple imprisonment for three months each.

3. Learned counsel appearing for the appellant submits that the impugned order is not in accordance with the provisions of Section 446 Cr.P.C. and that the learned trial Judge had not given sufficient opportunity to the appellants to explain their position. Counsel further

submits that the accused in the above Sessions Case subsequently appeared before the court below, faced trial and he was acquitted. This Court is not inclined to accept the said contention as a ground for interference with the impugned order.

4. It is seen that the appellants received notice on 18.1.2006 and the impugned order was passed on 20.1.2006. This shows that sufficient opportunity was not given to the appellants to explain their position. That apart, the court below sentenced the appellants to undergo simple imprisonment for three months each in default of payment of the amount ordered as penalty. Such a procedure is not contemplated under Section 446 Cr.P.C. Considering all these aspects, this Court is inclined to set aside the order passed by the court below. Accordingly, the impugned order is set aside and the matter is remanded to the court below for fresh consideration from the stage at which the impugned order was passed. The trial court shall issue fresh notice to the parties.

The Crl. Appeal is allowed by way of remand.

(K.THANKAPPAN, JUDGE)

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